

Remarks

Under 37 CFR 1.98(d), copies of items on an information disclosure statement are not required since the information disclosure statement filed on June 7, 2004 properly identified an earlier application to which priority is claimed by the present continuation application, and the information disclosure statement filed in such earlier application was proper. Accordingly, Applicants have complied with 37 CFR 1.98, and the Examiner's consideration of the items identified in the Information Disclosure Statement filed on June 7, 2004 is requested.

The specification is amended on page 1 to add the patent number of a referenced patent application.

Claims 26 and 30-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,260,569 (Kimura) in view of U.S. Patent No. 6,134,010 (Zavislan). Claim 26 has been amended to overcome the objection as item 3 of the Office Action, and to describe the illumination beam and returned illumination as being cross polarized with respect to each other inside the tissue. It is respectfully submitted that Kimura does not teach the use of cross-polarized imaging. Kimura uses a quarter wave plate 18 to convert the incident light into circularly polarized light which upon reflection from the sample and return passage through the quarter wave plate 18 converts the reflected light into orthogonally polarized light for separation of the illumination arms and detection arms (see path of illuminating light and returned light described in Kimura at column 5, line 38, to column 6, line 68). It should be noted that in Kimura, the return polarization is crossed only after it passes through the quarter wave plate. Thus, Kimura fails to describe or suggest that its illumination beam and returned illumination are cross polarized with respect to each other inside the tissue, since such is clearly not provided for by Kimura's optics of FIG. 1. Since Zavislan does not provide that absent in Kimura, the combination of Kimura and Zavislan fails to suggest Claim 26.

In regards to Claim 30, a container is described having means for placing the tissue of Claim 26 under tension against a surface through which optics scans the tissue with the illumination beam. Applicants refute Examiner's Office Notice that such container is well known since the Examiner is not reading Claim 30 as a whole, as required by MPEP 2143.03. It is not old and well known to hold tissue in a container

under tension against a surface through which optics scan such tissue with an illumination beam. Typical optical instruments to which Applicants believe the Examiner is referring to use the human eye or a camera to view constrained tissue on a slide, and do not scan tissue with an illumination beam. A demand for evidence from the Examiner to support his Office Notice position with respect to Claim 30 is hereby made. Mere Examiner statement that such is old and well known without citation to any particular reference in support of the entire claim is not well taken.

Claim 33, as amended, describes an image enhancing agent provided to tissue which at least changes the light scattering property of the tissue to enhance tissue structures in an image. As the Examiner points out at item 12 of the Office Action, chemical dyes are used in the observation of histologically processed tissue. It should be noted that these dyes do not alter the light scattering property of the tissue, as the dyes themselves absorb light to enhance contrast. In Claim 33, the image enhancing agent has the effect of at least changing the light scattering property of the tissue, and those chemical dyes to which Applicants believe the Examiner is referring do not have such an effect, but merely bind to the tissue. Accordingly, Applicants refute the Office Notice taken by the Examiner with respect to Claims 33-34, and a demand is hereby made for evidence supporting that it is old and well known to use an image enhancing agent which changes the light scattering property of the tissue to enhance imaged tissue structures. Thus, Claim 33 and dependent Claim 34 are patentable over Kimura or Zavislan, either alone or in combination.

Claims 27-29 and 35-36 were held allowable if rewritten to overcome the rejection of their base claims. Claims 27 and 35 have been rewritten with the limitations of their respective base Claims 26 and 33, and thus should now be allowable. Claims 28-29 and 36 are allowable as being dependent on their allowable respective base Claims 27 and 35.

Claim 41 should be allowable as it has been amended to overcome its 35 U.S.C. §112, second paragraph, rejection. Claims 42-43 depend on allowable Claim 41.

Claims 37-40 have been allowed.

New Claim 44 has been added to the application to describe an image enhancing agent patentable over Kimura and Zavislan for reasons argued above with respect to Claim 33.

This application is now in condition for allowance, a notice of allowance is respectfully solicited. A petition for a one-month extension of time is enclosed with a check for the required petition fee and fee for the additional independent claims.

Respectfully submitted,

Dated: April 26, 2005



Kenneth J. LuKacher
Attorney for Applicant(s)
Registration No. 38,539

South Winton Court
3136 Winton Road South, Suite 204
Rochester, New York 14623
Telephone: (585) 424-2670
Facsimile: (585) 424-6196

Enclosures: Combined Transmittal and Petition for Extension of Time with a Check for \$360.00; and
Change of Correspondence Address in Application.